of the Federation to acquire the land, and also the proprietor can be sure that any representations he may have made to the Federal Government against his land being compulsorily acquired have been considered by the High Commissioner.

It was sought to establish that there is dual authority in the High Commissioner and in a State or Settlement Government so that one or the other can acquire land for a federal purpose. To accede to such a proposition would mean that if a person or body, in this case the War Department, failed to satisfy the High Commissioner that the acquisition was necessary in the interests of the Federation, such person or body could approach the appropriate State or Settlement Government and attempt to persuade them to acquire the land independently of the High Commissioner. We reject that proposition because it does not accord with the true construction of clause 21 of the Agreement, and it would be bound to lead to confusion and friction between the Federal Government on the one hand, and State and Settlement Governments, on the other hand.

For these reasons we decide that no requirement having been made by the High Commissioner under clause 21 of the Agreement to acquire the land comprised in grant No. 10,031, lot No. 971, in the mukim of Ampang, in the district of Kuala Lumpur, in the State of Selangor, the Government of the State of Selangor, was not empowered to take proceedings for the compulsory acquisition of the said land for the purpose stated.

We think we should add that the Government of the State of Selangor, in proceeding to acquire this land compulsorily without a requirement to do so from the High Commissioner, did so in all good faith.

JAAFAR BIN HUSSAIN v. PUBLIC PROSECUTOR.

[Court of Appeal (Willan, C.J., Pretheroe and Taylor, JJ.) April 26, 1950]

[F.M. — Criminal Appeal No. 13 of 1950]

Emergency Regulations 1948, Reg. 4(1)(a) — Whether charges of being in possession of arms and of ammunition should be tried together or separately — Whether where the charges are tried separately, evidence in support of one charge can be given in the trial of the other charge — Evidence Enactment, s. 6 — Criminal Procedure Code, s. 165(i).

In this case the appellant was charged with two offences, first with carrying a shot gun at Kuala Krau, Pahang, on the 5th of January, 1950, and secondly with carrying a hand-grenade at the same time and place. At the trial the learned trial Judge directed that the trial should proceed on the second charge only. On the trial of this second charge, evidence was given that the appellant was carrying a gun. The appellant was convicted. On appeal it is argued that the evidence that the appellant was carrying a gun should not have been admitted, because the appellant was being tried on the second charge only, namely, for carrying a hand-grenade.

Held, (1) that where the acts of carrying arms and ammunition are so connected together as to form one transaction the person so found carrying the arms and ammunition should be charged with both offences and tried at one and the same trial for both of them; (2) that where, as in this case, one of the charges is stayed and the other charge is proceeded with, the evidence touching the charge which has been stayed is admissible, as the facts are so connected with the facts on which the other charge is born as to form part of the same transaction; (3) that the evidence was rightly admitted in this case and therefore the appeal must be dismissed.

Cases referred to:—

(1) *R. v. Peckham* 25 Cr. App. R. 125.
(2) *Chong Kim Seng v. Public Prosecutor* (1949) M.L.J. 109.
(3) *R. v. Jones* 13 Cr. App. R. 86.
(4) *R. v. Davis* 26 Cr. App. R. 95.
(5) *Amrita Lal Hazra v. Emperor* I.L.R. 42 Cal. 957 at p. 983.
(6) *Queen Empress v. Vajiram* I.L.R. 16 Bom. 414 at p. 430.
(7) *R. v. Ellis* 6 B. & C. 145.

CRIMINAL APPEAL.

J. Skrine for the appellant.

N. L. Cohen for the respondent.

Cur. Adv. Vult.

The judgment of the Court of Appeal was delivered by:—

Willan, C. J.:—In this case the appellant was charged with two offences, first, under Regulation 4(1)(a) of the Emergency Regulations, 1948, with carrying a shot gun at Kuala Krau, in the State of Pahang, on the 5th of January, 1950, and secondly, under Regulation 4(1)(b) with carrying a hand-grenade at the same time and place.

At the commencement of the trial, before the Assessors were chosen, the appellant claimed trial on both charges and, at the request of the prosecution, the learned trial Judge directed that the trial should proceed on the second charge only, *i.e.* on the charge relating to the hand grenade only. There is nothing on the record to indicate the reason why the prosecution applied to proceed on the second charge only, or why that application was granted.

From the evidence it is clear that the appellant was arrested by the police as a result of information received by them; that at the time of his arrest he was carrying on his person a shot gun and a hand-grenade; and that, when challenged by the police, he threw down both the shot gun and the grenade.

At least three witnesses for the prosecution gave evidence that the appellant was carrying a gun, and Mr. Skrine, for the appellant, argued that this evidence should not have been admitted because the appellant was being tried on the second charge only, namely, for carrying a hand-grenade.

Mr. Skrine cited the case of *R. v. Peckham*[1]. In that case the prisoner, who was charged upon two indictments, was given in charge of the jury upon one indictment only, but, owing to a misunderstanding, evidence was admitted, which was relevant only to the other indictment. At page 127, the Lord Chief Justice, delivering the judgment of the Court of Criminal Appeal, said :—

"The appellant was first called upon to plead to both indictments, but he was given in charge to the jury on one indictment only. Nevertheless, the case was opened on behalf of the Crown on all the materials of both indictments, and, as the trial of one indictment proceeded, evidence was given which was relevant only to the other indictment."

At page 128, His Lordship continued :—

"It is enough for the purpose of this appeal that there was misreception of evidence which was relevant only to other indictment. Such misreception is fatal . . . . ."

This Court had occasion to refer to that case in a previous appeal — *Chong Kim Seng v. Public Prosecutor*[2] in which the appeal was allowed. In that case the accused was charged with (1) being in possession of a revolver, and (2) with being in possession of ammunition and a hand-grenade. One of the grounds for allowing that appeal was that though the first charge was stayed, evidence relating to the revolver was admitted on the trial of the second charge only. The facts in that case were complicated and entirely different from those in the present case. In that case the accused was arrested when he was standing at the doorway of a house carrying a cloth bag in which there were several rounds of ammunition. On a table in the house, a revolver, a hand-grenade and other ammunition were found, and another person, who was not arrested, was seen to run from the house when the police arrived. The learned trial Judge in that case decided that the trial should proceed on the second charge relating to the ammunition and the hand-grenade. In that he was correct because (a) the revolver was not found on the person of the appellant, and (b) the circumstances were complicated by the presence in the house of one other person who ran away and was not arrested, and there was no evidence to show that the appellant was in exclusive possession of the revolver, the hand-grenade and the ammunition found on the table in the house. In spite of that, evidence was admitted as to the revolver, the subject matter of the first charge.

On that appeal, Federal Counsel argued that the evidence of the finding of the revolver on the table was admissible under section 7 of the Evidence Enactment (Cap. 10), which reads :—

"Facts which are the occasion, cause or effect, immediate or otherwise, of relevant facts, or facts in issue, or which constitute the state of things under which they happened, or which afforded an opportunity for their occurrence or transaction, are relevant."

In allowing that appeal the Court of Appeal pointed out that the trial Judge had been confused because he directed the Assessors that the hand-grenade was in a cloth bag carried by the appellant, whereas it was found on the table in the house. The Court of Appeal said, at page 110 of the report in (1949) 15 M.L.J. :—

"The fact in issue in this case was whether the appellant was or was not in possession of the ammunition and hand-grenade, the subject matter of the second charge, and it cannot be said that the finding of the revolver was the occasion, cause or effect of that fact in issue . . . . . We are unable to find any provision of the Evidence Enactment which connects the revolver with the subject matter of the second charge, so as to make evidence regarding the revolver admissible in relation to that charge."

The judgment in that appeal was never intended to be, and is not, an authority for the proposition that on a trial for one offence evidence touching on the commission of another offence by the accused can never under any circumstances be given.

It is apparent that confusion exists as to the law on this matter, and we think it advisable, as regards offences against Regulation 4(1) of the Emergency Regulations, 1948, first, to give a ruling on this question and, secondly, to discuss the provisions of sub-section (i) of section 165 of the Criminal Procedure Code (Cap. 6).

There have been, and there will continue to be, cases in which the accused person is arrested and found to be carrying, or to be in possession of, both arms and ammunition. In such cases the prosecution can either (a) use sub-section (i) of section 165 of the Criminal Procedure Code by charging the accused with both offences and trying them together at one trial, or, (b) apply to stay one charge and proceed only on the other charge. For reasons which are set out later in this judgment we think the former course is generally preferable.

We think that the reluctance to use sub-section (i) of section 165 of the Criminal Procedure Code arises from the view — an erroneous view — that in no circumstances should two capital cases be tried together.

In *R. v. Jones*[3] where a count for robbery with violence was joined with a count for murder in the same indictment, the Court of Criminal Appeal said :— "A trial for murder is too serious and complicated to have such counts inserted." It should be noted that the phrase is "too serious *and* complicated" and not too serious *or* complicated.

In a later case of *R. v. Davis*[4] the appellant was convicted of two murders at one and the same trial. On appeal the appellant relied on the case of *R. v. Jones, supra,* but the Court of Criminal Appeal, in dismissing the appeal, said :—

"In our opinion it is not accurate to say that the joinder of the two counts in this case is fatal, and indeed, when one looks at the facts of the two charges, it is apparent that together they may well be regarded as substantially one transaction."

Although that Court of Criminal Appeal went on to say that the joinder of two murders in one indictment is undesirable they also said that the matter is one for judicial discretion.

Carrying or being in possession of arms, and carrying or being in possession of ammunition, are offences both of which carry a mandatory death penalty. But, when an accused is found with a firearm and ammunition on his person, at one and the same time, the facts cannot be said to be complicated. To use the words set out in the passage quoted from *R. v. Davis, supra,*

"when one looks at the facts of the two charges, it is apparent that together they may well be regarded as substantially one transaction".

That brings us to the words "the same transaction" in sub-section (i) of section 165 of the Criminal Procedure Code. That sub-section reads :—

"If in one series of acts so connected together as to form the same transaction more offences than one are committed by the same person, he may be charged with and tried at one trial for every such offence."

We agree with the following passage from the case of *Amrita Lal Hazra v. Emperor*[5] :—

"It is not possible to frame a comprehensive formula of universal application to determine whether two or more acts constitute the same transaction; but circumstances which must bear on the determination of the question in an individual case may be easily indicated: they are proximity of time, unity or proximity of place, continuity of action and community of purpose or design."

If a person is found carrying arms and ammunition on his person, at one and the same time and place, he is found armed and there can be no doubt that there is continuity of action and community of a purpose or design. Accordingly he should be charged with both offences and tried at one and the same trial for both of them.

If the prosecution take the second course and apply to stay the trial on one charge and proceed on the other, then, in such a case as we have described, we fail to see how it is possible to exclude the evidence touching the charge which has been stayed. The evidence touching it could only be excluded either by coaching the witnesses before the trial or by the prosecutor unduly leading them, both of which courses are objectionable. The two offences are so inseparably connected that the proof of one necessarily and inescapably involves proving the other, as it does in the case now before us. It is for these reasons we prefer that the accused should be tried at one trial for both offences.

Section 6 of the Evidence Enactment (Cap. 10) reads :—

"Facts which, though not in issue, are so connected with a fact in issue as to form part of the same transaction are relevant, whether they occurred at the same time and place or at different times and places."

In the present case the appellant had on his person a shot gun and a hand-grenade, and he threw both on to the ground when challenged by the police. Although the facts relating to the shot gun are not in issue, because at the trial that charge was stayed, those facts form part of the same transaction, namely that the appellant was, at the time and place mentioned in the charge relating to the hand-grenade, armed. And, even though those facts disclose that the appellant was guilty of the other offence of carrying a shot gun, they are admissible under section 6 of the Evidence Enactment. As to this see the case of *Queen Empress v. Vajiram*[6] where the case of *R. v. Ellis*[7] is cited. The latter case decided :—

"Generally speaking, it is not competent to a prosecutor to prove a man guilty of one felony, by proving him guilty of another, unconnected felony; but where several felonies are connected together, and form part of one entire transaction, then the one is evidence to show the character of the other."

Therefore the evidence regarding the shot gun was rightly admitted, and this ground of appeal fails. As it is the only ground of appeal, the consequence is that this appeal is dismissed.

We have taken the most simple case of a person carrying on his person, at the same time and place, both arms and ammunition as the means of explaining the two points referred to earlier in this judgment. This does not mean that is the only case where two such charges can be tried together or where, if one charge is proceeded with and the other stayed, evidence relating to the charge so stayed is admissible

on the trial of the other charge. The question of whether such charges should be tried together or, if they are not, whether such evidence is admissible, is one for decision in each particular case.

Appeal dismissed.

WONG CHIK AND ANOR. v. PUBLIC PROSECUTOR.

[Court of Appeal (Willan, C.J., Pretheroe and Taylor JJ.) April 28, 1950]

[F.M. — Criminal Appeal No. 18 of 1950]

Emergency Regulations, 1948, Regulation 4(1)(a), 7 and 8(1) — Certificate of Public Prosecutor — Admissibility of evidence of carrying ammunition on a trial for carrying arms only — Acts forming same transaction — Evidence Enactment, s. 6.

In this case the first appellant was charged with carrying a rifle and with carrying a hand-grenade and ammunition. The trial proceeded on the first charge only but evidence of his carrying the ammunition was admitted at the trial. The second appellant was charged with carrying a rifle. A certificate from the Public Prosecutor was produced before the Committing Magistrate but not at the trial. Both appellants were convicted and they appealed.

Held, (1) that Regulations 7 and 8(1) of the Emergency Regulations, 1948, only required that the certificate should be produced before the Committing Magistrate and as this was done in this case, there was no need to produce the certificate at the trial; (2) that as in this case the carrying of the hand-grenade and the ammunition formed part of the same transaction as the carrying of the rifle, the evidence relating to the hand-grenade and ammunition was rightly admitted under section 6 of the Evidence Enactment.

Case referred to:—

(1) *Jaafar bin Hussain v. Public Prosecutor* (1950) M.L.J. 154; 1 M.L.R. 67.

CRIMINAL APPEAL.

Ng Kok Thoy for the appellants.

N. L. Cohen for the respondent.

Cur. Adv. Vult.

The judgment of the Court of Appeal was delivered by:—

Willan, C. J.: — In this case the two appellants were convicted each of carrying a rifle in the Belangu area (Mentakab) in the State of Pahang on the 8th October, 1949, an offence contrary to Regulation 4(1)(a) of the Emergency Regulations, 1948. The learned trial Judge and both assessors were unanimous as to the guilt of each appellant.

Mr. Ng Kok Thoy, for both appellants, relied mainly on the following three grounds of appeal.

First, as regards both the appellants, he argued that the High Court had no jurisdiction to try the case under the Emergency (Criminal Trials) Regulations, 1948, because the certificate referred to in Regulation 7 thereof has not been produced at the trial.

Regulation 7 reads:—

"Where a person is charged with any offence against any written law and the Public Prosecutor certifies in writing that the case is a proper one for trial under these Regulations, such case shall be tried and disposed of in accordance with the provisions of Regulations 8 to 12 inclusive of these Regulations."

Regulation 8(1) reads:—

"No preliminary enquiry shall be held in respect of an emergency procedure case, but the Magistrate or District Judge" (now President of a Sessions Court) "before whom the accused person is brought shall, upon production of the certificate referred to in Regulation 7 of these Regulations, and whether or not a preliminary enquiry has already been commenced, forthwith commit the accused for trial by the High Court at such place, whether within the same State or Settlement or not, and upon such charges as may be designated by the Public Prosecutor."

In this case the certificate referred to in Regulation 7 was produced before the Committing Magistrate in accordance with the provisions of Regulation 8(1), and in our view this is all that is required. By that Regulation a person can only be committed for trial under the Regulations if the certificate is produced — a Magistrate or President of a Sessions Court has no power to commit under the Regulations without that certificate.

The committal record in this case, which in the usual way was forwarded by the Committing Magistrate to the High Court, contains the necessary certificate produced before him. As already stated, that is all that is required, and there is no need for that certificate to be produced at the trial.

The second ground of appeal was that, as regards the first appellant, there was not sufficient evidence of his identification.

It is true that the only direct evidence of his identification was that of one witness, Sergeant Cox. The learned trial Judge specifically brought this to the notice of the assessors. The assessors believed the evidence of Sergeant Cox and so did the learned trial Judge. There are no grounds why we should differ from them.

The third ground of appeal, again as regards the first appellant, was that evidence against him of carrying ammunition was admitted on a trial for carrying arms only. This appellant had two charges against him, first as regards carrying a rifle and, secondly, that at the same time and place he, the first appellant, was carrying a hand-grenade and ammunition. The trial proceeded on the first charge only.